



House of Representatives

File No. 883

General Assembly

January Session, 2007

(Reprint of File No. 694)

Substitute House Bill No. 5639
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 29, 2007

AN ACT CONCERNING THE CLOSING OF A LONG-TERM CARE FACILITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-353 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2007*):

3 (a) Any facility, as defined in subsection (a) of section 17b-352,
4 which proposes (1) a capital expenditure exceeding one million
5 dollars, which increases facility square footage by more than five
6 thousand square feet or five per cent of the existing square footage,
7 whichever is greater, (2) a capital expenditure exceeding two million
8 dollars, or (3) the acquisition of major medical equipment requiring a
9 capital expenditure in excess of four hundred thousand dollars,
10 including the leasing of equipment or space, shall submit a request for
11 approval of such expenditure, with such information as the
12 department requires, to the Department of Social Services. Any such
13 facility which proposes to acquire imaging equipment requiring a
14 capital expenditure in excess of four hundred thousand dollars,
15 including the leasing of such equipment, shall obtain the approval of

16 the Office of Health Care Access in accordance with section 19a-639,
17 subsequent to obtaining the approval of the Commissioner of Social
18 Services. Prior to the facility's obtaining the imaging equipment, the
19 Commissioner of the Office of Health Care Access, after consultation
20 with the Commissioner of Social Services, may elect to perform a joint
21 or simultaneous review with the Department of Social Services.

22 (b) An applicant, prior to submitting a certificate of need
23 application, shall request, in writing, application forms and
24 instructions from the department. The request shall include: (1) The
25 name of the applicant or applicants; (2) a statement indicating whether
26 the application is for (A) a new, additional, expanded or replacement
27 facility, service or function, (B) a termination or reduction in a
28 presently authorized service or bed capacity or (C) any new, additional
29 or terminated beds and their type; (3) the estimated capital cost; (4) the
30 town where the project is or will be located; and (5) a brief description
31 of the proposed project. Such request shall be deemed a letter of intent.
32 No certificate of need application shall be considered submitted to the
33 department unless a current letter of intent, specific to the proposal
34 and in accordance with the provisions of this subsection, has been on
35 file with the department for not less than ten business days. For
36 purposes of this subsection, "a current letter of intent" means a letter of
37 intent on file with the department for not more than one hundred
38 eighty days. A certificate of need application shall be deemed
39 withdrawn by the department if a department completeness letter is
40 not responded to within one hundred eighty days.

41 (c) In conducting its activities pursuant to this section, section 17b-
42 352 or both, the commissioner or said commissioner's designee [may]
43 shall hold a public hearing [on an] upon the earliest occurrence of: (1)
44 Receipt of any letter of intent submitted by a facility to the department,
45 or (2) receipt of any certificate of need application [or on more than
46 one application, if such applications are of a similar nature with
47 respect to the request. At least two weeks' notice of the hearing shall be
48 given to the] submitted by a facility. The commissioner, or the
49 commissioner's designee shall provide both the facility and the public

50 with notice of the date of the hearing not less than fourteen days in
51 advance of such date. Notice to the facility shall be by certified mail
52 and notice to the public shall be by publication in a newspaper having
53 a substantial circulation in the area served by the facility. Such hearing
54 shall be held at the [discretion of the commissioner in Hartford or in
55 the area so served] facility for which the letter of intent or certificate of
56 need application was submitted not later than thirty days after the date
57 on which such letter or application was received by the commissioner.
58 The commissioner or said commissioner's designee shall consider such
59 request in relation to the community or regional need for such capital
60 program or purchase of land, the possible effect on the operating costs
61 of the facility and such other relevant factors as the commissioner or
62 said commissioner's designee deems necessary. In approving or
63 modifying such request, the commissioner or said commissioner's
64 designee may not prescribe any condition, such as, but not limited to,
65 any condition or limitation on the indebtedness of the facility in
66 connection with a bond issued, the principal amount of any bond
67 issued or any other details or particulars related to the financing of
68 such capital expenditure, not directly related to the scope of such
69 capital program and within the control of the facility. If the hearing is
70 conducted by a designee of the commissioner, the designee shall
71 submit any findings and recommendations to the commissioner. The
72 commissioner shall grant, modify or deny such request within ninety
73 days, except as provided for in this section. Upon the request of the
74 applicant, the review period may be extended for an additional fifteen
75 days if the commissioner or said commissioner's designee has
76 requested additional information subsequent to the commencement of
77 the review period. The commissioner or said commissioner's designee
78 may extend the review period for a maximum of thirty days if the
79 applicant has not filed in a timely manner information deemed
80 necessary by the commissioner or said commissioner's designee. No
81 facility shall be allowed to close, terminate a service or decrease
82 substantially its total bed capacity until such time as a public hearing
83 has been held in accordance with the provisions of this section and the
84 commissioner has approved the facility's request. The commissioner

85 may impose a civil penalty of not more than five thousand dollars on
86 any facility that fails to comply with the provisions of this subsection.
87 Penalty payments received by the commissioner pursuant to this
88 subsection shall be deposited in the special fund established by the
89 department pursuant to subsection (c) of section 17b-357 and used for
90 the purposes specified in said subsection (c).

91 (d) The Commissioner of Social Services shall adopt regulations, in
92 accordance with chapter 54, to implement the provisions of this
93 section. The commissioner shall implement the standards and
94 procedures of the Office of Health Care Access concerning certificates
95 of need established pursuant to section 19a-643, as appropriate for the
96 purposes of this section, until the time final regulations are adopted in
97 accordance with said chapter 54.

98 Sec. 2. Subsection (a) of section 17b-354 of the general statutes is
99 repealed and the following is substituted in lieu thereof (*Effective from*
100 *passage*):

101 (a) Except for applications deemed complete as of August 9, 1991,
102 the Department of Social Services shall not accept or approve any
103 requests for additional nursing home beds or modify the capital cost of
104 any prior approval for the period from September 4, 1991, through
105 June 30, [2007] 2012, except (1) beds restricted to use by patients with
106 acquired immune deficiency syndrome or traumatic brain injury; (2)
107 beds associated with a continuing care facility which guarantees life
108 care for its residents; (3) Medicaid certified beds to be relocated from
109 one licensed nursing facility to another licensed nursing facility,
110 provided (A) the availability of beds in an area of need will not be
111 adversely affected; (B) no such relocation shall result in an increase in
112 state expenditures; and (C) the relocation results in a reduction in the
113 number of nursing facility beds in the state; (4) a request for no more
114 than twenty beds submitted by a licensed nursing facility that
115 participates in neither the Medicaid program nor the Medicare
116 program, admits residents and provides health care to such residents
117 without regard to their income or assets and demonstrates its financial

118 ability to provide lifetime nursing home services to such residents
119 without participating in the Medicaid program to the satisfaction of
120 the department, provided the department does not accept or approve
121 more than one request pursuant to this subdivision; and (5) a request
122 for no more than twenty beds associated with a free standing facility
123 dedicated to providing hospice care services for terminally ill persons
124 operated by an organization previously authorized by the Department
125 of Public Health to provide hospice services in accordance with section
126 19a-122b. Notwithstanding the provisions of this subsection, any
127 provision of the general statutes or any decision of the Office of Health
128 Care Access, (i) the date by which construction shall begin for each
129 nursing home certificate of need in effect August 1, 1991, shall be
130 December 31, 1992, (ii) the date by which a nursing home shall be
131 licensed under each such certificate of need shall be October 1, 1995,
132 and (iii) the imposition of such dates shall not require action by the
133 Commissioner of Social Services. Except as provided in subsection (c)
134 of this section, a nursing home certificate of need in effect August 1,
135 1991, shall expire if construction has not begun or licensure has not
136 been obtained in compliance with the dates set forth in subparagraphs
137 (i) and (ii) of this subsection.

138 Sec. 3. Subsection (b) of section 19a-545 of the general statutes is
139 repealed and the following is substituted in lieu thereof (*Effective July*
140 *1, 2007*):

141 (b) Not later than ninety days after appointment as a receiver, such
142 receiver shall take all necessary steps to stabilize the operation of the
143 facility in order to ensure the health, safety and welfare of the residents
144 of such facility. In addition, within a reasonable time period after the
145 date of appointment, not to exceed six months, the receiver shall: (1)
146 Determine whether the facility can continue to operate and provide
147 adequate care to residents in substantial compliance with applicable
148 federal and state law within the facility's state payments as established
149 by the Commissioner of Social Services pursuant to subsection (f) of
150 section 17b-340, together with income from self-pay residents,
151 Medicare payments and other current income and shall report such

152 determination to the court; [and] (2) determine the amount of state
153 payments that would be necessary to continue to operate the facility in
154 a manner that provides adequate care to residents in compliance with
155 applicable federal and state law, together with income from self-pay
156 residents, Medicare payments and other current income, if the existing
157 rate is determined by the receiver to be inadequate to continue the
158 facility's operations, and shall report such determination to the court;
159 and (3) seek facility purchase proposals. If the receiver determines that
160 the facility will be unable to continue to operate in compliance with
161 said requirements, the receiver shall request an [immediate] order of
162 the court to close the facility and, if granted, make arrangements for
163 the orderly transfer of residents pursuant to subsection (a) of this
164 section unless the receiver determines that a transfer of the facility to a
165 qualified purchaser is expected [within ninety days] during the six-
166 month period commencing on the date of the receiver's appointment
167 or within a reasonable period of time if beyond six months. If a
168 transfer is not completed within [one hundred eighty days of the
169 appointment of the receiver] such period and all purchase and sale
170 proposal efforts have been exhausted, the receiver shall request an
171 immediate order of the court to close the facility and make
172 arrangements for the orderly transfer of residents pursuant to
173 subsection (a) of this section.

174 Sec. 4. Subdivision (16) of subsection (f) of section 17b-340 of the
175 general statutes is repealed and the following is substituted in lieu
176 thereof (*Effective July 1, 2007*):

177 (16) The interim rate established to become effective upon sale of
178 any licensed chronic and convalescent home or rest home with nursing
179 supervision for which a receivership has been imposed pursuant to
180 sections 19a-541 to 19a-549, inclusive, shall not exceed the rate in effect
181 for the facility at the time of the imposition of the receivership, subject
182 to any annual increases permitted by this section; provided [if such
183 rate is less than the median rate for the facility's peer grouping, as
184 defined in subdivision (2) of this subsection,] the Commissioner of
185 Social Services may, in the commissioner's discretion, and after

186 consultation with the receiver, establish an increased rate for the
 187 facility [not to exceed such median rate unless the Secretary of the
 188 Office of Policy and Management, after review of area nursing facility
 189 bed availability and other pertinent factors, authorizes the
 190 Commissioner of Social Services to establish a rate higher than the
 191 median rate. In the event the rate in effect for the facility at the time of
 192 imposition of the receivership is greater than the median rate for the
 193 facility's peer grouping, as defined in subdivision (2) of this subsection,
 194 the Secretary of the Office of Policy and Management, after review of
 195 area nursing facility bed availability and other pertinent factors, may
 196 authorize the Commissioner of Social Services to establish an increased
 197 interim rate] if the commissioner determines that such higher rate is
 198 needed to keep the facility open and to ensure the health, safety and
 199 welfare of the residents at such facility.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2007</i>	17b-353
Sec. 2	<i>from passage</i>	17b-354(a)
Sec. 3	<i>July 1, 2007</i>	19a-545(b)
Sec. 4	<i>July 1, 2007</i>	17b-340(f)(16)

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect
Department of Social Services	GF - See Below

Municipal Impact: None

Explanation

This bill modifies the hearing and notice requirements related to the closing of a long term care facility. This may lead to a minor administrative cost to the Department of Social Services (DSS).

The bill also extends the moratorium on new nursing home beds from June 30, 2007 to June 30, 2012. This provision was originally enacted to limit the growth of and expenditures for nursing home facilities and to encourage alternative and less expensive forms of elderly care. However, in recent years the number of nursing home beds needed in the state has been steadily declining. Therefore, it is not clear whether continuing the moratorium will have any fiscal impact.

The bill further specifies that no facility may close before public hearings are held and DSS approves such a request. The impact of this provision is dependent upon the disposition of the residents of the closing facility. Should this measure delay the movement of Medicaid patients to a less expensive setting, the state would incur increased Medicaid costs. However, if this measure delays the movement to a more expensive setting, it would result in a Medicaid savings.

The bill also allows DSS to impose a fine of up to \$5,000 on any facility that does not comply with the closure specifications. This will

result in an indeterminate revenue gain for the General Fund, depending upon the number of homes out of compliance as well as size of the penalties leveled by DSS.

The bill also extends the time that a receiver has to determine the financial stability of a facility and allows DSS to issue an interim rate that exceeds the median Medicaid nursing home rate without the approval of the Office of Policy and Management. These changes may result in both higher Medicaid rates as well as payment of interim rates for an extended period of time. This will result in increased Medicaid costs, the extent of which cannot be determined.

House "A" added the provisions specifying that a home cannot close prior to a hearing and extended the time a receiver has to determine financial stability. It resulted in the fiscal impacts noted above for these changes.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 5639 (as amended by House "A")******AN ACT CONCERNING THE CLOSING OF A LONG-TERM CARE FACILITY.*****SUMMARY:**

This bill requires the Department of Social Services (DSS) commissioner to hold a public hearing at the nursing home, rest home, residential care home, or intermediate care facility for the mentally retarded within 30 days after the facility submits a letter of intent or applies for a certificate of need (CON), whichever happens first, to establish a new, additional, expanded or replacement facility, service or function; expand or reduce its services or number of beds; make certain capital expenditures; or close the facility. (The letter of intent is a preliminary step before the facility submits a CON application so that DSS can send it the correct questions and application forms for the application.) Current law allows the commissioner to hold a hearing on an application, at his discretion, in Hartford or the area served and has no deadline for holding the hearing. The bill specifically prohibits any such facility from closing, terminating a service, or decreasing substantially its total bed capacity until a public hearing has been held in accordance with the bill and the commissioner has approved the facility's request.

The bill allows the commissioner to impose up to a \$5,000 civil penalty on any facility that fails to comply with these provisions. It requires the commissioner to deposit such penalty payments in an existing special fund to be used, in DSS's discretion, for the protection of the health or property of nursing home residents, including relocation costs, payment for continuing operation of a facility pending correction of deficiencies or closure, and reimbursement of residents

for personal funds lost.

The bill also modifies some of the duties of a court-appointed receiver of a nursing home or residential care home and extends the timeframes for accomplishing these duties. It also removes certain restrictions on the DSS commissioner's authority to set a higher interim rate for Medicaid payments to nursing homes sold after being in receivership.

Finally, the bill also extends the current moratorium on new nursing homes and nursing home beds from June 30, 2007 to June 30, 2012. (The moratorium law, in effect since 1991, contains several minor exceptions.)

The bill also makes several technical changes.

*House Amendment "A" adds the letter of intent language; the prohibition on closing a facility, terminating a service, or substantially reducing beds; the 30-day hearing deadline; and the \$5,000 civil penalty. It also adds the provisions concerning the receiver's duties and the commissioner's authority to increase interim rates.

EFFECTIVE DATE: July 1, 2007, except for the nursing home moratorium extension, which is effective upon passage.

MODIFICATION OF RECEIVER'S DUTIES

Current law prescribes certain actions for a court-appointed receiver of a nursing home or residential care home. The bill adds that, within 90 days after his or her appointment, the receiver must take all necessary steps to stabilize the facility's operation to ensure the residents' health, safety, and welfare. The bill extends the deadline from 90 days to a reasonable time period not to exceed six months for the receiver to (1) determine whether the facility can continue to operate and provide adequate care to residents in substantial compliance with federal and state laws within its revenues from state payments, self-pay residents, Medicare, and other current sources and to report the conclusion to the court and (2) seek facility purchase

proposals. The bill adds to this list the receiver's responsibility, if he or she determines the existing rate the state pays is inadequate to continue the facility's operations, to determine the amount that would be needed, together with the other types of income, to continue to operate the facility in a manner that provides residents adequate care in compliance with the law and report this determination to the court.

Current law requires the receiver, if he or she determines that the facility cannot continue to operate in compliance with the above requirements, to immediately request a court order to close the facility and make arrangements for residents' orderly transfer to other facilities, unless the receiver determines that the facility's transfer to a qualified purchaser is expected within 90 days. The bill removes the requirement that the receiver request an immediate court order for closure and specifies that the arrangements for transferring residents need to begin only if the court order is granted. Under current law, this timing does not apply if there is an expectation the facility will be purchased within 90 days. The bill changes this exception to the six-month period beginning on the receiver's appointment date or, if it takes longer than that, within a reasonable time. It requires an immediate court order for closure only if the transfer has not been completed during this time, rather than within 180 days of the receiver's appointment as currently required, and adds that all purchase and sale proposal efforts must have been exhausted.

DSS COMMISSIONER'S AUTHORITY TO APPROVE INTERIM RATES

The bill further removes certain restrictions on the interim rate for Medicaid payments to nursing homes sold after being in receivership that the DSS commissioner can authorize. It allows the commissioner, in his discretion and after consulting with the receiver, to increase these rates if he determines that the higher rate is needed to keep the facility open and to ensure residents' health, safety, and welfare. Current law allows the commissioner to authorize an interim rate up to the median rate for the facility's peer grouping and permits a rate above the median with the Office of Policy and Management

secretary's approval. The law contains two geographic peer groupings of nursing homes for each level of care (chronic and convalescent care homes, which provide skilled nursing care, and rest homes with nursing supervision, which provide intermediate care) for the purpose of determining rates and allowable costs. One peer grouping is for Fairfield County and the other is for the rest of Connecticut.

COMMITTEE ACTION

Human Services Committee

Joint Favorable Substitute Change of Reference

Yea 18 Nay 1 (03/22/2007)

Appropriations Committee

Joint Favorable

Yea 50 Nay 0 (04/17/2007)